IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

CONTEMPT PETITION NO.109 OF 2002

IN

PAUPER PETITION NO.5 OF 1999

...

Vijay Shashikant Thakur
and ors. ...Petitioners

v/s.

Bhawan K. Thakur (since deceased)
1A.Smt. Pramodini Thakur and ors...Respondents

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Mr.O.R.Tiwari for the Petitioners.
Mr.Dipesh Shenoy i/b L.J. Law & Associates for the Respondents.
Respondent No.1C present in Court.

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CORAM: D.K.DESHMUKH, J.

DATED: 10TH JANUARY,2007

P.C.:

1. The Petitioner has filed a civil suit. In that civil suit, one Bhagwan K. Thakur was the Defendant. In that civil suit, Notice of Motion was taken out seeking some interim reliefs. On that Notice of Motion on 10-6-1999 an order was made granting ad-interim reliefs in terms of prayer clause (b). Prayer clause (b) of that Notice of Motion reads as under:-

> (b) Pending the hearing and final disposal of the suit, Respondent/Defendant, his agents, servants and representatives be restrained temporarily by an injunction order of this Hon'ble Court restraining them from:
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> (i) selling, alienating, encumbering with, dealing with, disposing off, or parting with possession of the suit property and/or

inducting any third party or creating any third party rights in respect of the same relating to the suit property bearing C.T.S. No.1195, 1198 and 1198(1) to (9) of village Kandivali in any manner whatsoever.

(ii) carrying out any further development of from doing any construction activities on the entire suit property i.e. property bearing CTS No.1195, 1198 and 1198(1) to (9) of village Kandivali in any manner whatsoever.

(iii) recovering monthly rent/compensation/profits, mesne profits and/or from taking any other income and/or from creating or transferring any tenancy or ownership in respect of the tenaments/premises existing on suit plot of land and/or from accepting any consideration amount from any person or persons including tenants/occupants etc. arising from the suit property i.e. property bearing CTS No.1195, 1198 and 1198(1) to (9) of village Kandivali in any manner whatsoever.

2. It appears that the original defendant Bhagwan took out a notice of motion seeking modification in the ad-interim order dated 10-6-1999. By order dated 31st August, 1999 passed in the notice of motion taken out by the Defendant Bhagwan, ad-interim order dated 10-6-1999 was modified and the Defendant was permitted to collect the rent, pay municipal taxes, put a fencing around the property, but he was directed to maintain accounts and furnish copy of the same to the Plaintiff. The notice of motion taken out by the Plaintiff was numbered as Notice of Motion No.1820 of 1999. By order dated 21st September, 2001, ad-interim order dated 10-6-1999, as modified by order dated 31st August, 1999, was confirmed. It is clear that by interim order this court restrained the original Defendant from transferring tenancy. The original Defendant was to collect the rent, but he was to maintain accounts and furnish copies to the Plaintiff.

3. Original Defendant-Bhagwan died in December, 2000. The present Respondents who are his legal representatives were brought on record in July, 2001. Therefore, interim order passed in the suit will bind the present Respondents from July, 2001. Perusal of

the petition shows that during his life time the deceased Defendant contrary to the court's order had transferred the tenancy. But though that is in breach of the court order, the contempt petition in relation thereto cannot be entertained, because tenancy was transferred by the deceased Defendant. But it appears that even the present Respondents have transferred the tenancies. An allegation in that regard is contained in paragraph 3(f) of the petition, where the Petitioner has stated that the Respondents have recently inducted Harishchandra Mashelkar in the room earlier occupied by Jayantilal Khiraj Karia. According to the Petitioner, this conduct of the Respondents of transferring tenancy and inducting third party is contrary to the court's order. In paragraph 3(g), the Petitioner has stated that neither the original Defendant nor the present Respondents who are his legal representatives have furnished any accounts as directed by the interim order passed by the Court.

4. This petition was heard for admission by the court on 14-2-2003. Perusal of the order dated 14-2-2003 shows that the Respondents were served with the petition. But they did not appear in court. The

court heard the petition after recording its satisfaction that prima facie there was breach of the order directed issuance of show notice. Therefore, show cause notices have been issued to the Respondents. They are appearing in court. Though, the Respondents have admittedly been served with this petition long back, they have chosen not to file any affidavit disputing the allegations that are made in the petition.

5. The learned Counsel appearing for the Respondents is also not in a position to give any explanation why Respondents have not filed any reply in the petition. In the absence of any affidavit filed by the Respondents controverting the allegations made in the petition, specially the allegation made in paragraph 3(f) and 3(g) of the petition, those allegations have to be accepted at their face value. If that is done, it is clear that the present Respondents Nos.1A, 1B and 1C have willfully disobeyed the interim order passed by this court by transferring tenancy in relation to one tenement mentioned in paragraph 3(f) and by not furnishing copies of the accounts which were directed to be maintained by the interim order passed by the court.

6. The Respondents Nos. 1A, 1B and 1C are thus guilty of having committed civil contempt by this court. Now, the question to be considered is what is the punishment to be imposed on the Respondents for having committed civil contempt of this court. So far as Respondents Nos.1A, 1B are concerned, Respondent No.1A is the widow of the original Defendant Bhagwan and 1B is unmarried daughter of original Defendant Bhagwan. In my opinion, therefore, there is no likelihood of their active participation in transferring the tenancy. Therefore, in my opinion, it will not be appropriate to impose any sentence of imprisonment on them. Interest of justice would be served by imposing fine on them. Respondents Nos.1A and 1B are thus, directed, to pay find of Rs.2000/- each. So far as Respondent No.1C is concerned, he is son of the deceased Defendant Bhagwan. It is apparent that it is he who willfully breached the order passed by this court. Though he was served with the petition he did not appear before the court when the court heard the petition for admission. Even after he was served with the show cause notice he did not care to file any reply. The conduct of the Respondent No.1C of

not filing even reply shows that he was in no position to deny the allegations that have been made by the Petitioner against him. In my opinion, therefore, in order to maintain dignity of the court and to maintain the confidence of the people in the system, it will be in the interest of justice to sentence the Respondent No.1C to imprisonment. In my opinion, sentencing the Respondent No.1C to undergo simple imprisonment for a period of one month will serve the interest of justice. It is accordingly so ordered. Petition disposed of.

. So far as Respondent No.1 is concerned, at the request of the advocate appearing for Respondent No.1C the sentence imposed on his is suspended for a period of four weeks.

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